

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 28, 2009

STATE OF TENNESSEE v. STEPHANIE CAMPBELL

Appeal from the Circuit Court for Blount County
No. C-16093 David R. Duggan, Judge

No. E2008-02581-CCA-R3-CD - Filed August 14, 2009

The defendant, Stephanie Campbell, pleaded guilty in the Blount County Circuit Court to one count of theft of property valued at \$1,000 or more but less than \$10,000, a Class D felony, *see* T.C.A. §§ 39-14-103, -105(3) (2006), and two counts of theft of property valued at more than \$500 but less than \$1,000, a Class E felony, *see id.* §§ 39-14-103, -105(2). The trial court imposed an effective sentence of four years, to be served as five months' incarceration followed by probation. The trial court later revoked the defendant's probationary sentence and ordered the defendant to serve one year of incarceration followed by reinstatement to probation. It is from this order that the defendant appeals. Discerning no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and D. KELLY THOMAS, JR., J., joined.

J. Liddell Kirk, Knoxville, Tennessee (on appeal), and Mack Garner, District Public Defender (at hearing), for the appellant, Stephanie Campbell.

Robert E. Cooper, Jr., Attorney General and Reporter; Melissa Roberge, Assistant Attorney General; Mike Flynn, District Attorney General; and Clinton Frazier, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On October 30, 2006, the defendant entered pleas of guilty to three counts of theft in exchange for an effective sentence of four years to be served as five months' incarceration followed by probation. On July 14, 2008, the State filed a probation violation report alleging that the defendant had violated the terms of her probation by failing to maintain verifiable employment, by failing to submit to a drug screen and admitting the use of illegal drugs, and by failing to pay court costs, restitution, or probation fees. A probation violation warrant issued the following day, and the defendant was arrested three months later.

At the November 3, 2008 probation revocation hearing, probation officer Terry Fowlkes testified that she had supervised the defendant's probation from November 16, 2006, until she filed the probation violation report on July 14, 2008. According to Ms. Fowlkes, the defendant reported regularly but failed to provide proof of full-time employment as required by the terms of her probation. Ms. Fowlkes recalled that the defendant had been employed at a McDonald's restaurant until November 2007. Thereafter, the defendant claimed to be working odd jobs, including "painting trailers" at Voluntary Village Parks, but did not provide Ms. Fowlkes with check stubs or contact information for any of the alleged employers. Ms. Fowlkes testified that she informed the defendant of the requirement that she maintain verifiable full-time employment at each of their monthly meetings from November 2007 through July 2008.

Ms. Fowlkes, who also supervised the defendant's probationary sentence from Knox County, testified that the defendant "became in arrearage for her supervision fees" and failed to pay court costs in either county. On July 8, 2008, Ms. Fowlkes asked the defendant to submit to a drug screen, and the defendant "said she wasn't able to give a specimen, but she did admit she had been using marijuana and Xanax." The defendant told Ms. Fowlkes she had used marijuana ten days before being asked to submit to the drug screen and Xanax three days prior to the request.

After Ms. Fowlkes filed the probation violation report, the defendant stopped reporting. She stated that she had not seen the defendant since the failed drug screen on July 8, 2008. Ms. Fowlkes testified that she told the defendant that she intended to file a probation violation report and recommended that the defendant turn herself in. According to Ms. Fowlkes, she did not believe the defendant would turn herself in because she had failed to turn herself in on a Knox County probation violation warrant even though it had "been open for over a year."

On cross-examination, Ms. Fowlkes admitted that the defendant had not acquired any new charges while on probation. Ms. Fowlkes conceded that she had not performed a home visit.

The 32-year-old defendant testified that she was a single mother with four children of whom she did not have custody. She stated that three of her children were in the custody of the State and that the remaining child lived with his father. The defendant said that she committed the thefts in both this case and her Knox County case to support her addiction to morphine. She claimed that she had not used morphine in more than two years at the time of the hearing and attributed her recovery to her four months' incarceration in the Blount County jail, which she deemed "good enough treatment." She said she lost custody of her children in large measure because of her addiction.

The defendant testified that after being released from the Knox County jail following a period of incarceration for failure to pay her child support obligation to the State, she began working at McDonald's. She stated that she quit her job at McDonald's because a new manager refused to allow her one Saturday off each month to visit with her three daughters. The defendant said that she was trying to regain custody of her children. She stated that, should she be released to probation, she could work at another McDonald's location that was holding a position for her. She also stated that she could live with her boyfriend and her boyfriend's sister upon her release.

The defendant testified that she “probably could have got proof” of her employment “[w]orking in the trailer park, mowing the grass. . . . learning to paint the trailers and stuff.” She stated that she failed to do so because she “just didn’t think about it.” The defendant admitted “tak[ing] half a Xanax and . . . smok[ing] a joint.” She blamed the marijuana use on peer pressure and claimed that she took the Xanax to treat “muscle spasms and stuff in [her] back . . . and bad headaches.” The defendant stated that she was “not a using addict at this point” but nevertheless admitted that “it would probably be in [her] best interest . . . to start attending [Narcotics Anonymous] meetings and stuff.”

The defendant acknowledged that she owed restitution, court costs, and probation fees and said she “should be able to pay them” if released. She stated that during her previous tenure with McDonald’s, “half of [her] check was going to child support.” According to the defendant, her child support had been “dropped” so that she could “get ahead.” She said, “I just want to get out of the mess that I got myself in. I want to stay clean and I want my children home.”

The defendant admitted that Ms. Fowlkes told her a violation warrant had been issued in her case and that she had told the defendant to surrender to authorities. The defendant said she intended to do so, but she wanted to raise the \$5,000 in bond first.

During cross-examination, the defendant admitted that she fully understood the conditions of her probation, including the payment of approximately \$15,000 in restitution, court costs, and probation fees. She admitted again that she had failed to maintain verifiable employment, had not paid any moneys toward restitution, court costs, or probation fees, and had used drugs on two occasions.

At the conclusion of the hearing, the trial court found that the defendant had “materially violated the terms of her probation. . . . [S]he has not had full-time verifiable employment. She . . . failed to provide a specimen for a drug screen on July 8, 2008 and admitted . . . that she used THC ten days earlier and that she had taken Xanax three days earlier.” The court also found that the defendant violated the terms of her probation by failing to pay restitution, court costs, and probation fees. The court noted that it was “particularly concerned about the failure to pay any restitution whatsoever.” The court revoked the defendant’s probation and ordered that “the sentence will be served in the form of a split confinement with one year to serve in the Blount County Jail, and then . . . intensive probation.” The court also extended the probation on the two Class D felony convictions by one year. The extension, however, did not affect the overall length of the four-year effective sentence.

In this appeal, the defendant concedes that she violated the terms of her probation but insists that “[t]here was not sufficient evidence presented to support a finding by a preponderance of the evidence that defendant’s deficiencies on these issues [were] willful.” She asserts that “it is unreasonable to expect that she had the resources to be in complete compliance with court cost and restitution obligations. It is unreasonable to expect that she could consistently maintain verifiable employment for the entire term of her probation.” She also contends that the trial court’s order of an additional year of confinement was not authorized by statute. The State submits that “the trial court properly revoked the defendant’s probation and ordered her to serve one year in confinement.”

Upon a finding by a preponderance of the evidence that the defendant has violated the conditions of probation, the trial court may revoke the defendant's probation and "cause the defendant to commence the execution of the judgment as originally entered, or otherwise in accordance with § 40-35-310." T.C.A. § 40-35-311(e) (2006); *see also Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). Following a revocation, "the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension." *Id.* § 40-35-310. The revoking court may extend the period of probation supervision for a period not to exceed two years. *Id.* § 40-35-308(c).

The decision to revoke probation rests within the sound discretion of the trial court, and this court will not disturb the trial court's ruling in the absence of a showing that the trial court abused that discretion. *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001) (citing *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991)). The trial court also retains the discretionary authority to order the defendant to serve the original sentence. *See State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995). To establish an abuse of discretion, the defendant must show "that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred." *Harkins*, 811 S.W.2d at 82 (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when "'the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved'" *Shaffer*, 45 S.W.3d at 555 (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)).

As indicated, the defendant admits that she violated the terms of her probation by failing to pay restitution, failing to pay court costs, failing to pay probation fees, failing to maintain full-time verifiable employment, and by using drugs. Despite her protestations that "it is unreasonable" to require her to comply with the conditions of her probation, that is exactly what is required by the probation agreement. The defendant was not placed on probation against her will, and she was, by her own admission, fully aware of the terms of probation and the consequences of failing to abide by those terms. Given the defendant's admissions, we cannot say that the trial court abused its discretion by revoking her probation.

Citing *State v. Hunter*, 1 S.W.3d 643 (Tenn. 1999), the defendant also claims that the trial court was not authorized to both impose a sentence of incarceration and extend the length of probation. *Hunter* provides that upon revoking probation, the trial court can "(1) order incarceration; (2) cause execution of the judgment as it was originally entered; or (3) extend the remaining probationary period for a period not to exceed two years." *State v. Hunter*, 1 S.W.3d 643, 648 (Tenn. 1999). Thus, as our supreme court explained, the trial court can either order the defendant to serve the entire sentence in confinement, order "the original probationary period to commence anew," or simply extend the remaining sentence by up to two years. *See id.* at 644. Nothing in *Hunter* prevents the trial court from ordering a period of incarceration of up to one year as a condition of the defendant's reinstated probation. Indeed, Code section 40-35-307(a) specifically provides that "[a] defendant receiving probation may be required to serve a specific portion of the sentence in periodic confinement in the local jail. . . ." T.C.A. § 40-35-307; *see also id.* § 40-35-306(a) (permitting a trial court to sentence a defendant to split confinement with probation following incarceration). Here, the trial court acted within its discretion by reinstating the defendant

to probation, extending the probationary term for the defendant's two-year sentences by one year, and by ordering the defendant to serve one year of incarceration as a condition of her probation.

Accordingly, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE